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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

ONYEZIA, CHUKS N

ART UNIT

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3691

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/043,357	<b>Applicant(s)</b> KELLAM ET AL.	
	<b>Examiner</b> CHUKS ONYEZIA	<b>Art Unit</b> 3691	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 October 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 2 and 5-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, and 5-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Response to Amendment***

1. Applicants' amendment and arguments filed on 10/02/2008 have been fully considered, and discussed below. It is noted that applicant has canceled claims 3-4 and amended claims 1, 9, 12, 13, 16, 19-22, 24, 25, 29, and 30. Therefore, claims 1, 2, and 5-30 are pending and currently considered for examination.

***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1, 2, and 5-12 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Based on Supreme Court precedent, a method/process claim must (1) be tied to another statutory class of invention (such as a particular apparatus) (see at least *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876)) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing (see at least *Gottschalk v. Benson*, 409 U.S. 63, 71 (1972)). A method/process claim that fails to meet one of the above requirements is not in

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compliance with the statutory requirements of 35 U.S.C. 101 for patent eligible subject matter. . Here the claims fails to meet the above requirements because the steps are neither tied to another statutory class of invention (such as a particular apparatus) nor physically transform underlying subject matter (such as an article or materials) to a different state or thing.

***Claim Rejections - 35 USC § 103***

4. Claims 1-30 rejected under 35 U.S.C. 103(a) as being unpatentable over Blalock et al. U.S. Application Publication No. 2001/0047284 A1 (PTO-892 Reference A) in view of Sheth U.S. Application Publication No. 2001/0032170 A1 (PTO-892 Reference B).

5. As per claim 1, Blalock teaches a method of bidding to drive competition in an auction comprising:

- a. Receiving a plurality of bids from a plurality of bidders (Blalock paragraph[0059], each carrier can submit its bids, lane by lane, through the web site interface)
- b. using a parameter to distinguish the bidders into at least a first subset and a second subset (Blalock paragraph[0144], there are one or more matrices which display the lowest rate-per-mile bids submitted by zone)

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- c. assigning a first identifier to the bidders in the first subset; assigning a second identifier to the bidders in the second subset (Blalock paragraph[0145], it can be seen that state or regional codes are used to identify both the rows (origin) and the columns (destination) that comprise the matrix . . . a shipper can view the lowest mileage rate for a particular transportation zone as determined through bidding by participating carriers);
- d. displaying a lowest bid with the identifier for each bidder (Blalock paragraph[0140], data columns provide specific information about the bids that have been submitted with respect to the various accessorials listed in the table . . . the "Min" is the minimum bid; Blalock paragraph[0144], there are one or more matrices which display the lowest rate-per-mile bids submitted by zone).
- e. Wherein the first identifier is unknown to the bidders in the second subset and wherein the second identifier is unknown to the bidders in the first subset (Blalock paragraph[0061], a shipper may choose not to allow carriers to view information associated with other carrier bids, or the shipper may choose to post bids "publicly" via the web site to create a dynamic bidding process) examiner interprets that if a shipper can choose to limit a carrier

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from viewing bid information then it is implied that other, non selected, carriers would be able to view this information;

However, Blalock does not explicitly teach, subset known to each bidder within the subset. Sheth teaches creating an on-line private marketplace for a subset of vendors (see Sheth paragraph [0086]). Sheth also teaches the option of allowing vendors of the created subset to view other bids (Sheth paragraph [0090]). One of ordinary skill in the art would have found motivation to combine these teachings in this way for the purpose of establishing an exclusive group of vendors that are qualified and interested in bidding on projects (Sheth paragraph [0015]).

6. Claims 12, 13, and 22 are rejected using logic similar to that used above to reject claim 1.

7. As per claim 2, Blalock teaches the method of claim 1 as discussed above. Blalock further teaches, updating the lowest bids with new lowest bids from the bidders (Blalock paragraph [0146], selection of the "Submit Status Changes" button updates the status of each carrier with respect to the particular RFQ in the integral database)

8. As per claim 5, Blalock teaches the method of claim 1 as discussed above. Blalock further teaches, setting, in each subset, bid terms (Blalock paragraph [0139], If the shipper

allows open bidding on the accessorial, the designation "Open" appears in the "Bid Rule" data column)

9. As per claim 6, Blalock teaches the method of claim 5 as discussed above. Blalock further teaches, setting comprises establishing at least one of a reserve price, a historic price, a target price, time dependent variables, and bid strategies (Blalock paragraph[0102], the displayed data is but a preferred selection and layout of data which could be modified); the displayed data is notes as being time dependent variables such as contract period, preview time, bidding start time, award time, and acceptance time as shown in table B.

10. As per claim 7, Blalock teaches the method of claim 6 as discussed above. Blalock further teaches, establishing comprises providing time dependent variables including at least one of an opening time, a closing time, time extensions, and disclosures based on time (Blalock paragraph[0102], the displayed data is but a preferred selection and layout of data which could be modified); the displayed data is notes as being time dependent variables such as bidding start time, bidding stop time, preview time, and acceptance time as shown in table B.

11. As per claim 8, Blalock teaches the method of claim 1 as discussed above. Blalock further teaches, providing a parameter, the parameter being at least one of regions, payment terms,

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delivery terms, contract length, contract volume, material, and qualification status (Blalock paragraph[0143], Matrix bidding allows carriers participating in an RFQ to submit rate-per-mile bids for particular transportation zones, from one geographic area to another)

12. As per claim 9, Blalock teaches the method of claim 8 as discussed above. Blalock further teaches:

f. The parameter comprises regions (Blalock paragraph[0145], it can be seen that state or regional codes are used to identify both the rows (origin) and the columns (destination) that comprise the matrix);

g. The competition comprises global and regional competition (Blalock claim 12, wherein said computer network is the World Wide Web portion of the global Internet); and

h. The assigning comprises allotting a range of numbers to each region and giving a number to each bidder in the region (Blalock paragraph[0094], The PERSONAL PROFILE SCREEN includes a data entry window with multiple data entry fields, indicated generally by reference numeral 54, that allow the logged-in shipper to revise its personal profile data. In this particular embodiment, the following information may be revised) the information to be revised



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includes address, city, state, and postal code as depicted in table A and Figure 4-2. It is well known to those skilled in the art that postal code is an allotment of a range of numbers denoting separate regions or subsets of a geographical area.

13. As per claim 10, Blalock teaches the method of claim 9 as discussed above. Blalock further teaches, displaying comprises illustrating the lowest bids to allow a comparison regionally and globally (Blalock paragraph[0144], there are one or more matrices which display the lowest rate-per-mile bids submitted by zone; also Blalock figure 10-2 illustrates the lowest bid as "Min")

14. As per claim 11, Blalock teaches the method of claim 1 as discussed above. Blalock further teaches, receiving comprises accepting bids for a plurality of lots (Blalock claim 1, wherein each of said carriers can submit bids on one or more of the plurality of transportation lanes comprising said request for quotation)

15. As per claim 14, Blalock teaches the system of claim 13 as discussed above. Blalock further teaches, parameter comprises at least one of regions, payment terms, delivery terms, contract length, contract volume, material, and qualification status (Blalock paragraph[0143], Matrix bidding allows carriers

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participating in an RFQ to submit rate-per-mile bids for particular transportation zones, from one geographic area to another)

16. As per claim 15, Blalock teaches the system of claim 14 as discussed above. Blalock further teaches the subsets comprise:

- i. geographical areas for the regions (Blalock paragraph[0145], it can be seen that state or regional codes are used to identify both the rows (origin) and the columns (destination) that comprise the matrix);
- j. methods of payment for the payment terms (Blalock paragraph[0181] By selecting the "Remittance" hyperlink the shipper is re-directed to a screen displaying remittance contact information for the carrier);
- k. methods of delivery for the delivery terms (Blalock paragraph[0182], By selecting the "Equipment" hyperlink, the shipper is re-directed to a screen displaying detailed information about the carrier's equipment, including, but not limited to, number of tractors owned, leased trailers, total trailers, number of driving teams);
- l. times for the contract length (Blalock paragraph[0102], the displayed data is but a preferred selection and layout of data which could be modified; the

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displayed data is notes as being contract period as shown in table B);

m. capacities for the contract volume (Blalock paragraph[0224], The third data entry field is labeled "Cap." In this data entry field the carrier enters its capacity, i.e., the volume of truckloads the carrier can accommodate for the specified lane during a designated period of time);

n. types of material for the material (Blalock paragraph[0182], selecting the "Equipment" hyperlink, the shipper is re-directed to a screen displaying detailed information about the carrier's equipment, including, but not limited to, number of tractors owned, leased trailers, total trailers, number of driving teams); and

o. at least one of approval and certification for the qualification status (Blalock paragraph[0147], status of each carrier is an indication of its approved level of participation with respect to a particular RFQ . . . An "approved" carrier can fully participate in the RFQ).

17. As per claim 16, Blalock teaches the system of claim 13 as discussed above. Blalock further teaches, identifier comprises a number selected from a range of numbers assigned to the subset (Blalock paragraph[0094], The PERSONAL PROFILE SCREEN includes a

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data entry window with multiple data entry fields, indicated generally by reference numeral 54, that allow the logged-in shipper to revise its personal profile data. In this particular embodiment, the following information may be revised) the information to be revised includes address, city, state, and postal code as depicted in table A and Figure 4-2. It is well known to those skilled in the art that postal code is an allotment of a range of numbers denoting separate regions or subsets of a geographical area.

18. As per claim 17, Blalock teaches the system of claim 13 as discussed above. Blalock further teaches, database stores bid terms for each subset (Blalock paragraph[0139], If the shipper allows open bidding on the accessorial, the designation "Open" appears in the "Bid Rule" data column)

19. As per claim 18, Blalock teaches the system of claim 17 as discussed above. Blalock further teaches, bid terms comprise at least one of a reserve price, a historic price, a target price, time dependent variables, and bid strategies (Blalock paragraph[0102], the displayed data is but a preferred selection and layout of data which could be modified); the displayed data is notes as being time dependent variables such as contract period, preview time, bidding start time, award time, and acceptance time as shown in table B.

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20. As per claim 19, Blalock teaches the system of claim 13 as discussed above. Blalock further teaches, software updates the lowest bids with new lowest bids (Blalock paragraph[0146], selection of the "Submit Status Changes" button updates the status of each carrier with respect to the particular RFQ in the integral database)

21. As per claim 20, Blalock teaches the system of claim 13 as discussed above. Blalock further teaches, identifier indicates a number of bidders in each subset (Blalock paragraph[0111], The next category of data columns relates to OTR transportation bids. Specifically, "Bids" refers to the number of bids that have been submitted by carriers with respect to a particular lane)

22. As per claim 21, Blalock teaches the system of claim 13 as discussed above. Blalock further teaches, identifier varies by subset and conceals a number of bidders in each subset (Blalock paragraph[0061], Specifically, a shipper may choose not to allow carriers to view information associated with other carrier bids)

23. As per claim 23, Blalock teaches the medium of claim 22 as discussed above. Blalock further teaches, parameter comprises at least one of regions, payment terms, delivery terms, contract length, contract volume, material, and qualification status (Blalock paragraph[0143], Matrix bidding allows carriers

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participating in an RFQ to submit rate-per-mile bids for particular transportation zones, from one geographic area to another)

24. As per claim 24, Blalock teaches the medium of claim 22 as discussed above. Blalock further teaches:

p. geographical areas for the regions (Blalock paragraph[0145], it can be seen that state or regional codes are used to identify both the rows (origin) and the columns (destination) that comprise the matrix);

q. methods of payment for the payment terms (Blalock paragraph[0181] By selecting the "Remittance" hyperlink the shipper is re-directed to a screen displaying remittance contact information for the carrier);

r. methods of delivery for the delivery terms (Blalock paragraph[0182], By selecting the "Equipment" hyperlink, the shipper is re-directed to a screen displaying detailed information about the carrier's equipment, including, but not limited to, number of tractors owned, leased trailers, total trailers, number of driving teams);

s. times for the contract length (Blalock paragraph[0102], the displayed data is but a preferred selection and layout of data which could be modified; the

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displayed data is notes as being contract period as shown in table B);

t. capacities for the contract volume (Blalock paragraph[0224], The third data entry field is labeled "Cap." In this data entry field the carrier enters its capacity, i.e., the volume of truckloads the carrier can accommodate for the specified lane during a designated period of time);

u. types of material for the material (Blalock paragraph[0182], selecting the "Equipment" hyperlink, the shipper is re-directed to a screen displaying detailed information about the carrier's equipment, including, but not limited to, number of tractors owned, leased trailers, total trailers, number of driving teams); and

v. at least one of approval and certification for the qualification status (Blalock paragraph[0147], status of each carrier is an indication of its approved level of participation with respect to a particular RFQ . . . An "approved" carrier can fully participate in the RFQ).

25. As per claim 25, Blalock teaches the medium of claim 22 as discussed above. Blalock further teaches, first identifier comprises a number selected from a range of numbers assigned to the first subset (Blalock paragraph[0094], The PERSONAL PROFILE

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SCREEN includes a data entry window with multiple data entry fields, indicated generally by reference numeral 54, that allow the logged-in shipper to revise its personal profile data. In this particular embodiment, the following information may be revised) the information to be revised includes address, city, state, and postal code as depicted in table A and Figure 4-2. It is well known to those skilled in the art that postal code is an allotment of a range of numbers denoting separate regions or subsets of a geographical area.

26. As per claim 26, Blalock teaches the medium of claim 22 as discussed above. Blalock further teaches, database stores bid terms for each subset (Blalock paragraph[0139], If the shipper allows open bidding on the accessorial, the designation "Open" appears in the "Bid Rule" data column)

27. As per claim 27, Blalock teaches the medium of claim 26 as discussed above. Blalock further teaches, bid terms comprise at least one of a reserve price, a historic price, a target price, time dependent variables, and bid strategies (Blalock paragraph[0102], the displayed data is but a preferred selection and layout of data which could be modified); the displayed data is notes as being time dependent variables such as contract period, preview time, bidding start time, award time, and acceptance time as shown in table B.



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28. As per claim 28, Blalock teaches the medium of claim 22 as discussed above. Blalock further teaches, software updates the lowest bids with new lowest bids (Blalock paragraph[0146], selection of the "Submit Status Changes" button updates the status of each carrier with respect to the particular RFQ in the integral database)

29. As per claim 29, Blalock teaches the medium of claim 22 as discussed above. Blalock further teaches, identifiers indicate a number of bidders in each subset (Blalock paragraph[0111], The next category of data columns relates to OTR transportation bids. Specifically, "Bids" refers to the number of bids that have been submitted by carriers with respect to a particular lane)

30. As per claim 30, Blalock teaches the medium of claim 22 as discussed above. Blalock further teaches, first identifier conceals a number of bidders in the first subset (Blalock paragraph [0061], specifically, a shipper may choose not to allow carriers to view information associated with other carrier bids).

### ***Response to Arguments***

31. Applicant's arguments filed 10/02/2008 have been fully considered but they are not persuasive.

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Applicant argues that:

Selecting participants from a list of known vendors and then optionally allowing all participants to view each other's bids is not the same as an environment in which "the first identifier is unknown to bidders in the second subset and wherein the second identifier is unknown to bidders in the first subset" as recited in Claim 1.

Examiner responds that:

Examiner agrees with applicant's assertion; however examiner notes that Blalock paragraph [0061] reads that "a shipper may choose not to allow carriers to view information associated with other carrier bids". This is what examiner relies on in making the interpretation of associated bid information as identifiers. With this interpretation, nether bidder would be allowed the other's identifier/bid information.

***Conclusion***

32. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- ✓ Sernet U.S. Application Publication No. 2002/0032632 A1 (PTO-892 Reference C) discloses a trading system with anonymous bidding functions.
- ✓ Rupp et al. U.S. Patent No. 7,383,206 B2 (PTO-892 Reference D) discloses multiple variable bidding which provides bidders market feedback during bidding.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHUKS ONYEZIA whose telephone number is (571)270-1372. The examiner can normally be reached on Monday - Thursday 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on 571-272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Chuks Onyezia/  
Examiner, Art Unit 3691

/Alexander Kalinowski/  
Supervisory Patent  
Examiner, Art Unit 3691

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